Headquarters
U.S. Army Corps of Engineers

No FEAR Act Training

Office Of Equal Employment
Opportunity

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What This Training Includes

- This training presents information for you covering the No FEAR Act and other laws making discrimination and retaliation in the workplace illegal.
  - Equal Employment Opportunity
  - Whistleblowers Protection Act

What Does This Training Mean to You?

- Congress passed the No FEAR Act to ensure that the rights of employees, former employees, and applicants for employment are protected under discrimination, whistleblower and retaliation laws.
- This training should take approximately 30 minutes to complete.

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What Does This Training Mean to You?

- At the conclusion of this training, you should:
  - Understand the basic provisions of the No FEAR Act.
  - Know what anti-discrimination and Whistleblower Protection Laws protect you.
  - Understand how to file a complaint alleging discrimination, retaliation, or a violation of the Whistleblower Protection Laws.

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What is the No FEAR Act?

- Congress enacted the **No**tification and **F**ederal **E**mployee **A**nti-discrimination and **R**etaliation Act (No FEAR Act) on May 15, 2002.
- The Act requires "…Federal agencies including the Department of the Army to be accountable for violations of anti-discrimination and whistleblower protection laws."

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What is the No Fear Act?

- The Act requires Federal agencies to:
  - 1) Train and notify employees on their rights and protections under the anti-discrimination and whistleblower laws.
  - 2) Post information on its public website relating to complaints of discrimination and annually report to Congress.

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Anti-discrimination Laws

- As a Federal employee, you are protected from illegal discrimination in employment matters on the basis of your race, color, religion, sex, national origin, age, and disability.

  (29 C.F.R. Part 1614)

- Illegal discrimination occurs when one employee is treated differently than another employee and treatment is based on race, color, religion, sex, national origin, age, and/or disability.

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Types of Employment Matters Covered

- The anti-discrimination laws protect you from discrimination concerning the terms and conditions of your employment.
- Below is a list of some of the employment matters covered:
  - Hiring, promotion, pay, leave, awards, assignments, training, suspensions, and terminations;
  - Accommodations for religious reasons or for reasons based on disability.

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Types of Employment Matters Covered

- Harassment or creation of a hostile work environment based on race, color, religion, sex, national origin, disability, or age is covered.
- The Department of the Army has a "zero tolerance" policy regarding harassment.

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Title VII of the Civil Rights Act

The section will focus on highlights of the Civil Rights Act

and specifically Discrimination based on:

- Race
- Color
- Religion
- Sex (sexual harassment and pregnancy discrimination)
- National origin
- Disability
- Age
- Equal Pay Act
- Reprisal or Retaliation

- Supervisor's responsibilities
- Filing an EEO complaint

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Title VII of the Civil Rights Act

- Title VII of the **1964 Civil Rights Act**, as amended, protects employees from employment discrimination on the basis of sex, race, color, national origin, or religion. **Sexual harassment** and **pregnancy discrimination** are considered forms of sex discrimination and are prohibited by Title VII.

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Title VII of the Civil Rights Act

- In addition to protection against discrimination because of religion, Title VII also establishes the agency's duty to provide reasonable accommodation for an employee's religious beliefs, unless doing so would impose an undue hardship on the employer.

Age Discrimination in Employment Act

- The **A**ge **D**iscrimination in **E**mployment **A**ct (ADEA) prohibits discrimination against Federal employees who are 40 years of age or older.
  (29 C.F.R Part 1614)
- The Act protects older employees from employment actions based on stereotypes or stigmas associated with age.

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Rehabilitation Act

- The **Rehabilitation Act of 1973** prohibits employment discrimination against Federal employees with disabilities. In addition, agencies must provide reasonable accommodation for an employee or applicant with a disability.
- A “disability” is a physical or mental impairment that substantially limits a major life activity (breathing, walking, seeing, hearing, performing manual tasks).

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Rehabilitation Act

- A temporary or short term illness is not a disability.
- An inability to work in only one type of job, for one particular supervisor, or in one location is not a disability.
- You must be qualified for your position.
- If you cannot perform the essential functions of the job, with or without reasonable accommodation, **you are not qualified.**

Rehabilitation Act

- A reasonable accommodation is an adjustment to the work situation or environment to enable an individual with disabilities to perform his/her job, as long as it is not an undue hardship to the agency.

Rehabilitation Act

- The accommodation does not have to be specifically what is requested by the employee. It does have to be a reasonable, effective accommodation.
- The Agency has no obligation to change performance standards or to eliminate essential functions of your position as a reasonable accommodation.

Equal Pay Act

- The **Equal Pay Act of 1963** prohibits federal agencies from paying employees of one sex lower wages than those of the opposite sex for performing substantially equal work.

Protection Against Reprisal or Retaliation

- The anti-discrimination laws mentioned above protect you from reprisal for exercising your rights under those acts.
- Protected activities may include filing a complaint of discrimination, requesting reasonable accommodation, giving evidence or testimony to an investigator or in a hearing, or complaining about or protesting perceived discrimination against you or another employee.

If You Believe Discrimination Occurred

- **You must contact an EEO staff member within *45 calendar days* from when you first became aware of the alleged discrimination.**
- The names and telephone numbers of EEO staff members are available on bulletin boards, the intranet or you may contact your EEO Officer.

If You Believe Discrimination Occurred

- A counselor will try to resolve the complaint and you may be offered an opportunity to use Alternative Dispute Resolution (ADR) to resolve your complaint.
- If the complaint is not resolved, you will be provided a Notice of Right to File a Complaint. You must file within ***15 calendar days*** from receipt of the Notice.
- Under some negotiated grievance procedures, employees may elect to proceed under the negotiated grievance procedure, rather than filing a complaint of discrimination. **You cannot file both actions**.

If You Believe Discrimination Occurred

- You are entitled to a reasonable amount of official time to prepare and present your complaint.
- You are also entitled to official time to meet with a counselor, an investigator or to participate in the hearing.
- There is no set time. Official time is normally granted in terms of hours, not days.

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Marital Status & Political Affiliation Discrimination

- Federal law makes it illegal to discriminate against Federal employees because of their marital status or political affiliation or to retaliate against employees for exercising their rights.

- If you believe discrimination has occurred on one of these basis, you may file a written complaint with the U.S. Office of Special Counsel. You may also pursue such a complaint through your Department of the Defense administrative grievance system or the negotiated grievance procedures, if applicable.

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Manager and Supervisor Responsibilities

A manager or supervisor is required to:

- Have legitimate, non-discriminatory reasons for the actions taken.
- Treat employees fairly and equitably.
- Provide reasonable accommodation to individuals with disabilities and/or religious requirements. Check with the EEO Officer if you have questions about whether reasonable accommodation is appropriate.
- Only disclose medical information to officials with a need to know and keep medical information separate from personnel files.

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Manager and Supervisor Responsibilities

- Provide a reasonable amount of official time to an employee who requests time to work on an EEO complaint.
- Cooperate with an EEO counselor or EEO investigator. Failure to do so may result in disciplinary action.
- Ensure employees are not subjected to a hostile work environment because of their race, color, national origin, age, sex or disability.
- Act on all complaints of harassment.

Whistleblower Protection Laws

This section will focus on the Whistleblower Protection Laws

Whistleblower Protection Laws

- A Federal employee with authority to take, direct others to take, recommend or approve any personnel action **must not** use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence:
  - Violations of law, rule or regulation;
  - Gross mismanagement;
  - Gross waste of funds;
  - An abuse of authority; or
  - A substantial and specific danger to public health or safety.

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Merit System Principles

Adapted from § 2301 (b) of Title 5 U.S.C

A manager or supervisor is **required to**:

1. Recruit, select and advance on merit after fair and open competition
2. Treat employees and applicants fairly and equitably.
3. Provide equal pay for equal work and reward excellent performance
4. Maintain high standards of integrity, conduct and concern for the public interest
5. Manage employees efficiently and effectively
6. Educate and train employees if it will result in better organizational of individual performance
7. Protect employees from improper political influence
8. Protect employees against reprisal for unlawful disclosure of information in “whistleblower” situations

Prohibited Personnel Actions

Adapted from § 2302 (b) of Title 5 U.S.C.

A manager or supervisor is required to **not** :

1. Illegally discriminate for or against any employee/applicant
2. Solicit or consider improper employment recommendations
3. Coerce an employee's political activities
4. Obstruct a person's right to compete for employment
5. Influence any person to withdraw from competition for a position
6. Give unauthorized preference or improper advantage
7. Employ or promote a relative
8. Retaliate against a whistleblower, whether an employee or applicant
9. Retaliate against employees or applicants for filing an appeal
10. Unlawfully discriminate for off duty conduct
11. Knowingly violate veterans' preference requirements
12. Violate any law, rule or regulation which implements or directly concerns the merit principles

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Whistleblower Protection Laws

- 5 U.S.C § 2302(b)(8) prohibits retaliation against an employee or applicant for making a protected disclosure.
- Employees may not disclose information if disclosure is specifically prohibited by law or if the information is required under Executive Order to be protected from disclosure in the interest of national security.
- Management official cannot retaliate against an employee or applicant because that individual exercises his or her rights under the Whistleblower Protection Act.

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Filing a Whistleblower Protection Complaint

- If the personnel action is within the Merit System Protection Board's (MSPB) jurisdiction, the appellant may file a complaint with the Office of the Special Counsel (OSC) before filing an appeal with the MSPB, or may choose to go directly to MSPB with an appeal.
- If the appellant chooses to go directly to the MSPB:
  - The appeal must be filed no later than 30 days after the effective date of the action being appealed, or 30 days after receipt of the Department of the Army's decision, whichever is later.

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Filing a Whistleblower Protection Complaint

- To file a complaint with Office of Special Counsel (OSC) use: Form OSC-11 (Complaint of Possible Prohibited Personnel Practice or other Prohibited Activity)
- Contact OSC to obtain Form OSC-11 :

  Office of Special Counsel (OSC)
  Complaints Examining Unit
  1730 M Street, NW, Suite 218
  Washington, DC 20036-4505
  800-872-9855 (toll free) or 202-653-7188
- Online at www.osc.gov

Filing a Whistleblower Protection Complaint

- After the OSC complaint process is exhausted, the appellant may file an appeal with the MSPB:
  - No later than **65** days from the date that OSC's written notification was issued terminating the investigation; or
  - If notification was received more than 5 days after the date of issuance, the MSPB appeal must be filed within **60** days from the date OSC's notification was received.
- If OSC has not notified the appellant that it will seek corrective action within **120** days of the filing date, the appellant may file an MSPB appeal at any time after the **120** day period expires.

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Where Do I Go For More Information?

- For questions about the discrimination laws - contact your EEO Officer.
- For a detailed explanation of the EEO complaint process, see the in Department of the Army's web page at: http://eeoa.army.pentagon.mil/web/prog_comp/complaints/process.htm
- Information on the OSC's Disclosure Unit, which serves as a safe conduit for the receipt and evaluation of whistleblower disclosures from federal employees, former employees and applicants for federal employment, 5 U.S.C. § 1213 can be obtained from your local Human Resources Office, or visit OSC's website at www.osc.gov

No FEAR Act Statistics

- To view Department of the Army's No FEAR Act statistics, go to:

  http://eeoa.army.pentagon.mil/web/index.cfm

- Click on "No Fear"

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Certificate of Completion

[Date]
Completed by
[Name]

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Gonzellas E. Williams

/s/

Gonzellas E. Williams, Chief, EEO, USACE

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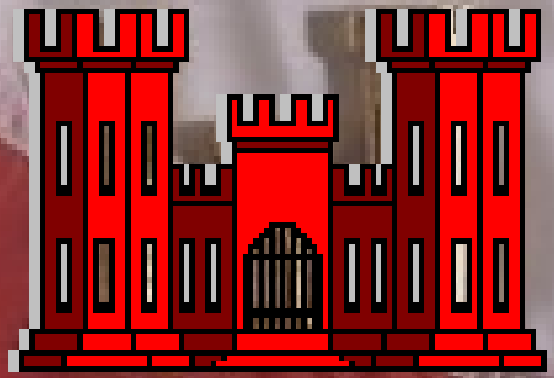

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